

Appl. No. 09/895,027
Reply Dated Mar. 1, 2004
Reply to Office Action of Dec. 1, 2003

REMARKS

Claims 1-20 are pending in the present application and stand rejected. Claims 1 and 5 have been amended to recite a preferred embodiment. Claim 4 has been cancelled without prejudice. Claim 21 has been added to recite a more preferred embodiment.

Claim 1 has been amended to delete "and c. means for minimizing migration of the beneficial component into the porous substrate" and to insert "wherein the beneficial component comprises at least a first layer and a second layer." Support for the amendment is found at page 16, line 20 to page 20, line 9 of the specification. Claim 1 was further amended to insert "and" into the claim for grammatical clarity.

Claim 5 has been amended to insert "which comprises at least a first layer and a second layer, wherein at least one layer is relatively hydrophilic and at least one layer is relatively hydrophobic" in place of "comprises two or more layers which comprise at least one relatively hydrophilic layer and at least one relatively hydrophobic layer." Support for this amendment is found at page 16, line 20 to page 19, line 27 of the specification.

Claim 21 has been added. Support for this amendment may be found at page 20, lines 2-9 of the specification.

No new matter is believed to have been added. Consequently, entry of these amendments is respectfully requested.

REJECTION UNDER 35 U.S.C. § 103

Claims 1-20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over International Publication No. WO 00/64502 to Krzysik et al. (hereafter "Krzysik"). In support of this rejection, the Office states, in part, that Krzysik teaches an absorbent article having a liquid impermeable outer surface, a middle absorbent portion and a top liquid permeable bodyside liner facing the wearer. The Office further states that Krzysik teaches that "the bodyside liner may be made of woven or nonwoven materials . . . [and] includes a lotion formulation on the outer bodyfacing surface . . ."

The Office concedes that Krzysik "does not teach the claimed thickness of the beneficial components on the porous substrate." Since Krzysik teaches that the lotion can be applied to the bodyside liner at 0.05-100 mg/cm², the Office asserts that it would have been within the scope of a skilled artisan to optimize the amounts of lotion applied on the absorbent article. The expected result being a minimum migration of the solidified components applied to the bodyside liner. The Office also argues that Krzysik discloses a z-direction migration loss test showing that the migration of the lotion on the absorbent article is very low.

The Office further concedes that Krzysik "does not explicitly teach layers of beneficial component or disposing a first hydrophilic layer followed by a hydrophobic layer." The Office

Appl. No. 09/895,027
Reply Dated Mar. 1, 2004
Reply to Office Action of Dec. 1, 2003

asserts that Krzysik suggests limiting the lotion to restricted areas of the article such that migration to the interior or lateral migration of the absorbent body is not observed. The Office concludes that it would have been obvious for one of ordinary skill in the art at the time of the instant invention to apply the lotion composition in a desired thickness or amount with an expectation to exhibit minimum migration. Applicants traverse this rejection.

Krzysik discloses an absorbent article having a bodyside liner including a lotion formulation on the outer bodyfacing surface. The lotion formulation comprises from about 5 to about 95 weight percent of an emollient, from about 5 to about 95 weight percent of a wax, and, optionally, from about 0.1 to about 25 weight percent of a viscosity enhancer. The lotion formulation has a reduced level of migration which leads to improved transfer to the skin. Applicants submit that the claims, as amended, are not anticipated by Krzysik.

With regard to Claim 1, it is well known that to establish a *prima facie* case of obviousness all claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981 (CCPA 1974). The teaching or suggestion to make the claimed combination must be found in the prior art and not the applicant's disclosure. *In re Vaeck*, 947 F.2d 488 (Fed. Cir. 1991). As stated above, Krzysik discloses an absorbent article having a bodyside liner including a lotion formulation on the outer bodyfacing surface. Page 13, line 15-16. Krzysik fails to teach or suggest at least two of Applicants' claim limitations.

First, Applicants' claim, as amended, recites "the beneficial component comprises at least a first and a second layer." Nothing in Krzysik teaches or suggests that its lotion formulation comprises a first and a second layer. As a result, Krzysik fails teach or suggest Applicants' claim limitation of a first and second layer.

Second, Applicants claim that "the ratio of the quantity of the beneficial component present on or within the thickness between 0 and $Z/3$ of the substrate is at least about 2.2 times the quantity of the component within the thickness between $2Z/3$ and Z of the substrate until the time of the use of the article." Krzysik teaches that the lotion formulation can be applied from about 0.05 to about 100 mg/cm² and that the lotion composition when applied to a bodyside liner will exhibit a z-direction migration loss of no more than about 55%. Nothing in Krzysik teaches or suggests that the quantity of the beneficial component on or within top third layer (0 to $Z/3$) will be 2.2 times the quantity of the beneficial component within the bottom third layer ($2Z/3$ to Z). As a result, Krzysik fails teach or suggest Applicants' claim limitation.

With regard to Claim 2, Applicants recite "where the article is intended for use on an inanimate surface." The Office has failed to point to a teaching or suggestion within Krzysik such that Krzysik's absorbent article may be used on an inanimate surface. As a result, the Office has failed in its initial burden to factually support the *prima facie* case of obviousness for Claim 2.

Appl. No. 09/895,027
Reply Dated Mar. 1, 2004
Reply to Office Action of Dec. 1, 2003

With regard to Claim 5, Applicants recite that the beneficial component comprises a layer that is relatively hydrophilic and a layer that is relatively hydrophobic. As discussed above in relation to Claim 1, Krzysik fails to teach or suggest Applicants' limitation that the beneficial component comprises at least a first and a second layer. Since Claim 1 is nonobvious in light of the arguments presented above, Claim 5 depending therefrom and containing all limitations is also nonobvious. *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). Furthermore, the Office states that Krzysik teaches viscosity enhancers such as cellulose, silica, petrolatum, and aloe that read on the instant hydrophilic components and wax which is hydrophobic. The Office goes on to state that "the wax and viscosity enhancer containing lotion solidifies at the site of deposition due to the high melting agents and therefore do not migrate from their position." The Office concludes that "adding the beneficial agents, hydrophobic or hydrophilic or both, in discreet patterns such as layers or stripes etc., and allowing the component to result in a proper composition, such emulsion formation or suspension or solution without affecting the optimum migration of the beneficial components would have been within the scope of a skilled artisan." The Office's rejection as to this claim is traversed for at least two additional reasons.

First, Krzysik teaches away from Applicants' claim limitation of relatively hydrophilic and relatively hydrophobic layers. Case law states that a prior art reference must be considered in its entirety including portions that would teach away from the claimed invention. *See W.L. Gore & Assocs., Inc. v. Garlock, Inc.*, 721 F.2d 1540 (Fed. Cir. 1983); MPEP § 2141.02. Krzysik teaches that lotion formulation was prepared by "mixing until all ingredients were melted and uniform." Krzysik's teaching of uniformity of the ingredients, both hydrophilic and hydrophobic ingredients, is in direct contradistinction to Applicants' claimed layers. Krzysik's uniform composition alone cannot be read as providing layers. As such, the Office has failed to consider Krzysik as a whole and appreciate the clear teaching away from Applicants' claimed invention.

Second, there is no motivation to modify the article of Krzysik so as to yield Applicants' claimed invention. While Krzysik may teach hydrophilic and hydrophobic ingredients for the lotion formulation, Applicants claim relatively hydrophilic and relatively hydrophobic layers. Krzysik does disclose that its lotion formulation may be applied as stripes. *See* page 19, line 32. However, Applicants fail to see the factual support for the Office's conclusion that Krzysik's lotion deposition pattern of stripes suggests that the lotion may be applied in layers, wherein one layer is relatively hydrophobic and one layer is relatively hydrophilic. The Office has failed in its initial burden to factually support the *prima facie* case of obviousness.

With regard to Claim 8, Applicants recite the limitation where the article is "a product selected from the group comprising of buffs, bandages, mops, cloths, wipes, sponges, or other flexible dispensing means intended for use on inanimate objections." The Office has failed to point to a

Appl. No. 09/895,027
Reply Dated Mar. 1, 2004
Reply to Office Action of Dec. 1, 2003

teaching or suggestion within Krzysik such that Krzysik's absorbent article may be a buff, bandage, mop, cloth, wipe, sponge, or other flexible dispensing means intended for use on inanimate objections. As a result, the Office has failed in its initial burden to factually support the *prima facie* case of obviousness for Claim 8.

With regard to Claim 9, the Office states that "adding beneficial agents, hydrophobic or hydrophilic or both, in discreet patterns such as layers . . . would have been within the scope of a skilled artisan." The Office has failed to meet its initial burden to factual support a *prima facie* case of obviousness for several reasons.

First, Krzysik teaches away from Applicants' claim limitation of relatively hydrophilic and relatively hydrophobic layers. Krzysik teaches that the lotion formulation was prepared by "mixing until all ingredients were melted and uniform." Krzysik's teaching of uniformity of the ingredients, both hydrophilic and hydrophobic ingredients, is in direct contradistinction to Applicants' claimed layers. As such, the Office has failed to consider Krzysik as a whole and appreciate the clear teaching away from Applicants' claimed invention.

Second, there is no motivation to modify the article of Krzysik so as to yield Applicants' claimed invention. The Office may not "resort to speculation, unfounded assumption, or hindsight reconstruction to supply deficiencies in its factual basis." *In re Rice* 481 F.2d 1316 (C.C.P.A. 1973). Krzysik does disclose that its lotion formulation may be applied as stripes. Page 19, line 32. However, Applicants' fail to see how the Office can make the leap from Krzysik's deposition pattern of stripes to a suggestion that the lotion maybe applied in layers. The Office's assertion that applying beneficial agents in discrete patterns such as layer would have been within the scope of a skilled artisan is factually unsupported and purely conclusory. The Office has failed in its initial burden to factually support the *prima facie* case of obviousness.

With regard to Claim 11, Applicants submit that this claim is nonobvious for substantially the same reasons as presented above in regard to Claim 5. First, Krzysik teaches away from Applicants' claim limitation of relatively hydrophilic and relatively hydrophobic layers by teaching that the lotion formulation was prepared by "mixing until all ingredients were melted and uniform." Krzysik's teaching of uniformity of the ingredients, both hydrophilic and hydrophobic ingredients, is in direct contradistinction to Applicants' claimed layers. As such, the Office has failed to consider Krzysik as a whole and appreciate the clear teaching away from Applicants' claimed invention. Second, there is no motivation to modify the article of Krzysik so as to yield Applicants' claimed invention. While Krzysik discloses that its lotion formulation may be applied as stripes, Applicants' fail to see how the Office can make the leap from Krzysik's deposition pattern of stripes to a suggestion that the lotion maybe applied in layers, wherein one layer is relatively hydrophobic and one layer is relatively

Appl. No. 09/895,027
Reply Dated Mar. 1, 2004
Reply to Office Action of Dec. 1, 2003

hydrophilic. The Office has failed in its initial burden to factually support the *prima facie* case of obviousness.

With regard to Claim 14, Applicants recite "the solubility parameters between the first layer and second layer is less than or equal to two." Krzysik does not teach or suggest layers or solubility parameters. Although this claim has been rejected, the Office has failed to provide support for its conclusion. As such, the Office has failed in its initial burden to factually support the *prima facie* case of obviousness.

With regard to Claim 16, Applicants recite a method comprising applying a first layer of a relatively hydrophilic component on the porous substrate, applying a second layer of a relatively hydrophobic component on the relatively hydrophilic component, and allowing the first layer and second layer to simultaneously cool on the substrate without the formation of an emulsion. The Office states that Krzysik teaches "applying the lotions to discreet areas as stripes as full length or a portion of the article and further in an add-on level, including the claimed steps of applying the component and solidifying." However, Krzysik teaches applying the lotion formulation by "(a) heating the lotion formulation to a temperature above the melting point of the formulation, causing the formulation to melt, (b) uniformly applying the melted formulation to the bodyfacing surface of the bodyside liner; and (c) resolidifying the deposits of the melted formulation." See page 19, lines 26-29. The Office's rejection as to this claim is traversed for at least two reasons.

First, the Krzysik teaches away from Applicants' claimed invention. Krzysik clearly discloses "uniformly applying the melted formulation to the bodyfacing surface of the bodyside liner." Applicants claim, in part, a method of applying a first layer of a relatively hydrophilic component and applying a second layer of a relatively hydrophobic component. Krzysik clearly requires uniform application of the lotion formulation which is in sharp contrast to Applicants' claimed layered method. When the claimed method involves doing what the cited reference tries to avoid, "[t]his is the very antithesis of obviousness." *In re Buehler*, 515 F.2d 1134, 1141 (CCPA 1975).

Second, there is no motivation to modify the article of Krzysik so as to yield Applicants' claimed invention. While Krzysik may teach hydrophilic and hydrophobic ingredients for the lotion formulation, Applicants claim a first layer of a relatively hydrophilic component and a second layer of a relatively hydrophobic component. While Krzysik does disclose that its lotion formulation may be applied as stripes (page 19, line 32), Applicants' fail to see the factual support for the Office's alleged assertion that Krzysik's lotion deposition pattern of stripes suggests that the lotion maybe applied in layers (i.e., a first layer of a relatively hydrophilic component and a second layer of a relatively hydrophobic competent). Applicants have found no teaching or suggestion the Krzysik lotion

Appl. No. 09/895,027
Reply Dated Mar. 1, 2004
Reply to Office Action of Dec. 1, 2003

formulation involves application of multiple layers. The Office has failed in its initial burden to factually support the *prima facie* case of obviousness.

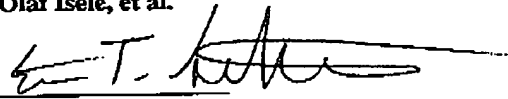
With regard to dependent claims not specifically addressed above, Applicants' submit that all independent claims have been traversed. As such, the dependent claims depending therefrom and containing all limitations are also nonobvious. *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988)

CONCLUSION

All rejections in the Office Action have been addressed. Based on the foregoing reasons, Applicants respectfully request reconsideration and withdrawal of the rejections. Allowance of each of the pending claims in the next Office Action is requested.

Respectfully Submitted,

For: Olaf Isele, et al.

By 

Eric T. Addington
Attorney for Applicants
Registration No. 52,403
Tele. No. (513) 626-1602

Mar. 1, 2004
Cincinnati, Ohio